

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

INFORMAL DOCKET NO.: 1953(I)

KAIRAT NURGAZINOV,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

**COMPLAINANTS' RESPONSE TO RESPONDENTS' JOINT MOTION
FOR AN EXTENSION OF TIME**

Complainants, through their Counsel, Marcus A. Nussbaum, Esq. hereby respond to the “joint” motion by respondents and their counsel for an extension of time for respondents to respond to and oppose the motion for leave to withdraw as counsel for the respondents by Eric C. Jeffrey, Esq. and Nixon Peabody LLP.

RELIEF REQUESTED

Respondents Empire United Lines Co. Inc. (“EUL”) and Michael Hitrinov (“Hitrinov”), both pro se and by their counsel, Eric C. Jeffrey (“Jeffrey”) have “jointly” moved for an Order from the Presiding Officer granting an unprecedented near sixty (60) day “extension” of respondent Hitrinov’s time within which to respond to Jeffrey’s Motion to Withdraw.

Respondents have further “jointly” moved for an Order from the Presiding Officer “waiving” the twin requirements imposed by the Commission’s Rules of Practice and Procedure (“RPP”), to wit: (1) that a request for such an extension on a non-dispositive motion be made on the date that the motion is served; and (2) that the request for such an extension be made seven days prior to the date upon which said filing would otherwise be due.

As set forth below, respondents “joint” motion should be denied in its entirety, with prejudice.

RECENT PROCEDURAL HISTORY

On November 16, 2016 Jeffrey, on behalf of respondents, filed a motion seeking leave for Jeffrey and his firm to withdraw from their representation as counsel for the respondents in this matter. A copy of Jeffrey’s motion is annexed hereto as Appendix “1”.

Thereafter, on November 17, 2016, complainants filed their response to Jeffrey’s motion, opposing the relief requested therein in its entirety. A copy of complainants’ response is annexed hereto as Appendix “2”.

Subsequent thereto, on November 22, 2016 Jeffrey incongruously filed a motion *on behalf of his client with whom Jeffrey had become estranged and adverse*, seeking an extension of time *for his estranged client* to submit a response to Jeffrey’s motion.

It is further significant to note, and otherwise bears mentioning that while professing an inability to communicate with his own client, Jeffrey was apparently entirely unaware that his own client had abandoned his offices at the address repeatedly referred to in multiple documents relating to this case, as evinced by a Certification executed in an unrelated matter, a copy of which is annexed hereto as Appendix “3”. More egregiously, Jeffrey apparently made *no effort whatsoever* to attempt to contact his client at his residence address despite the fact that respondent,

Hitrinov has resided at the same address from the inception of this litigation to the time of this writing.

Following the above, Jeffrey interposed a “motion by email”, which though thoroughly convoluted appears to have requested the unnoticed relief of withdrawing his motion for an extension of time, and seeking advice from the Office of the Secretary as to how he should proceed in connection with withdrawing Jeffrey’s own motion, to be substituted with a “pro se” motion by his client, Hitrinov *whom Jeffrey continues to represent*. It is particularly noteworthy that Jeffrey *strenuously insisted* that his reason for withdrawing the motion for an extension that he had incongruously made on behalf of his then estranged client, Hitrinov (going so far as to confess to a “miscommunication”) was so that his client, Hitrinov could “...file a motion in lieu of the motion that [he] filed today...”. Accordingly, complainants were *shocked* when in lieu of the much vaunted and advertised “individual” motion of Hitrinov, Jeffrey and Hitrinov instead colluded on and produced the “joint” motion now before the Presiding Officer.

Despite Jeffrey’s motion having been electronically filed with both the Office of the Secretary *and* the Presiding Officer, by email of November 23, 2016 Ms. Rachel Dickon from the Office of the Secretary indicated that Jeffrey’s motion had been withdrawn.

Thereafter, and later that same date, Jeffrey and his client, Hitrinov electronically filed their instant “joint” motion for an extension of time, to which complainants now respectfully respond in vehement opposition thereto.

BRIEF STATEMENT

This matter came under the jurisdiction of the Presiding Officer following filing and service of complainants’ instant Complaint on or about November 12, 2015.

Since then, respondents by their counsel, Jeffrey have for the past year engaged in every possible scam, scheme, contrivance, and endless frivolous motion practice which has resulted in

bringing this case to a complete standstill, of which Jeffrey's pending motion, and the so-called "joint" motion of Jeffrey and his client, Hitrinov are only the most recent example emblematic of same.

In sum, Jeffrey filed a motion for both he and his firm to be given leave to withdraw as counsel for the respondents herein upon ground of Hitrinov allegedly not paying his legal bills. In so doing, Jeffrey candidly admits as to having had *no contact whatsoever* with his client for a period of *over four (4) months*, prior to Hitrinov's miraculous 'resurfacing' within the last forty-eight (48) hours, conspicuously coterminous with complainants' opposition to Jeffrey's motion to withdraw, and a separate Status Report sent to the Presiding Officer's attention, a copy of which is annexed hereto as Appendix "4".

Throughout this most unfortunate and galactically protracted litigation, Jeffrey has repeatedly not only violated the RPP with impunity, but on several occasions has gone so far as to attempt to rewrite the RPP to respondents' unfair advantage, of which Jeffrey's latest effort is only the most recent example thereof.

Specifically, Jeffrey has asked the Presiding Officer to *waive* the applicable Rules with regard to the timing of respondents' submissions in order to effectively "stay" this already greatly protracted matter for an additional sixty (60) days for *no good cause shown* and to *no apparent purpose* other than to further unreasonably delay expeditious litigation of this matter beyond the incalculable delays already engendered through Jeffrey's continuing bad faith methods of practice.

As set forth below, it is respectfully submitted that complainants should not be further prejudiced with such unreasonable delay while Jeffrey and his client, Hitrinov attempt to rekindle their legal romance, and that the more appropriate remedy would be for Jeffrey to *withdraw, in toto* his now baseless motion to withdraw as counsel for the respondents, without prejudice and

with leave to renew, so that orderly and expeditious litigation of this matter may yet once again ensue.

ARGUMENT

Standard of Review

RPP 71 reads, in relevant part, as follows:

A response to a non-dispositive motion must be served and filed within 7 days after the date of service of the motion.

RPP 102 reads, in relevant part, as follows:

Motions for enlargement or reduction of time for the filing of any pleading or other document, or in connection with the procedures of subpart L of this part, may be granted upon *a showing of good cause*. Motions must set forth the reasons for the request and be received at least seven (7) days before the scheduled filing date. Motions filed less than seven (7) days before the scheduled filing date may be considered where *reasonable grounds* are found for the failure to meet this requirement (emphasis added).

It is respectfully submitted that Jeffrey has abjectly failed to either establish any good cause shown or reasonable grounds for the collective failure of Jeffrey and his client, Hitrinov to meet the requirements of the RPP as set forth above.

Based upon the aforescribed rules, and in that Jeffrey's motion was served on his estranged client, Hitrinov with whom Jeffrey professes to have had *no communication whatsoever* for the past four (4) months, as of November 16, 2016 it was incumbent upon Hitrinov to have requested an extension of time *on the date the motion was served*, and seven (7) days before the scheduled filing date. These things, both Jeffrey and his estranged client, Hitrinov have manifestly *failed* to do. Neither does Jeffrey set forth any good cause shown, reason, or explanation as to why the extension that Jeffrey now "jointly" seeks with his estranged client, Hitrinov was not timely made.

Based upon the foregoing, it is respectfully submitted that the "joint" motion of Jeffrey and Hitrinov should be summarily denied as having been made in a grossly untimely fashion.

Respondents' "Double-teaming"

In a shocking example of 'sharp practice' heretofore unprecedented in the history of the Commission and any cases emanating therefrom, and preeminent among Jeffrey's many oddities, eccentricities, and inventing of law out of whole cloth, is Jeffrey's latest foray into previously uncharted territory, wherein a party represented by counsel is free to make separate submissions on single issues "jointly" with a party's counsel amidst claimed disagreements on financial obligations, and professed communication difficulties, now both exposed as being wholly specious and entirely spurious in nature.

Succinctly stated, and with unmitigated gall and unbridled temerity, Jeffrey now seeks leave to have he and his client, Hitrinov "double-team" the Presiding Officer with separate and individual submissions on single extant issues as evinced by Jeffrey's representation as follows: "Accordingly, *each* of Movants reserves the right to re-open the question of withdrawal and/or move for a stay, if such work becomes necessary." (emphasis added). In so doing, Jeffrey seeks to have his motion to withdraw hang over the heads of complainants as a veritable 'Sword of Damocles', inclusive of unfettered freedom to further delay this galactically protracted case with yet additional motions and "stays" as the mood or moment may strike Jeffrey or his client, Hitrinov. Needless to say, the foregoing creates an untenable scenario which cannot possibly be allowed to lie.

It is respectfully submitted that an infinitely more appropriate remedy would be for Jeffrey and his estranged client, Hitrinov to now withdraw their "joint" motion for an extension while they resolve their legal 'domestic difficulties', without prejudice and with leave to renew "if necessary". It is further respectfully submitted that not only does the foregoing proposal obviate the need to rewrite the RPP 'in Jeffrey's own graven image', but rather additionally provides a more greatly simplified procedural posture, and one which additionally obviates further undue prejudice to

complainants in the form of unwarranted additional delays, and one which will allow orderly and expeditious resumption of the discovery process while Jeffrey and Hitrinov collectively contemplate their legal and financial navels.

Avoiding Additional Delay Must Trump the Personal Conveniences of Jeffrey and Hitrinov

It is difficult if not impossible to assemble verbiage which fairly and accurately describes the breathtaking arrogance of Jeffrey and Hitrinov, who place their own personal conveniences and “travel plans” over the near fatal delays, prejudice and detriment which have inured to complainants herein through Jeffrey’s continuing placement of his personal (and now those of his client Hitrinov) and other legal matters in which he is engaged over the case at bar. Least the Presiding Officer forget, such contrivances included the *despicable* act of Jeffrey having abused the otherwise inviolate excuse of the death of a family member in order to unnecessarily delay proceedings herein, while simultaneously finding time to appear in other matters and engage in other work. It is respectfully submitted that the time for the Presiding Officer to cut off further abuses of the discovery process by Jeffrey and his estranged client, Hitrinov, is *now*. To that end, it is further respectfully submitted that the joint proposal of Jeffrey and Hitrinov for a sixty (60) day “adjournment” of the time within which for Hitrinov to respond to Jeffery’s motion, let alone the additional delay before said motion would be returnable is unreasonable, unjust, untenable, and must be denied in its entirety, with prejudice.

CONCLUSION

It is respectfully submitted that in filing their instant “joint” motion, Jeffrey and his estranged client, Hitrinov have violated with impunity, and otherwise sought to rewrite the RPP to their own unjust and unfair advantage.

It is further respectfully submitted that neither Jeffery nor Hitrinov have proffered *any* reasonable explanation *whatsoever* as to *why* it is necessary to further delay litigation of this matter

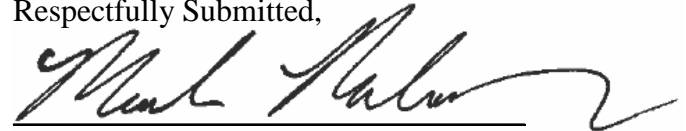
by an additional sixty (60) days to plaintiffs' undeniable prejudice and detriment, or as to what prejudice could possibly inure to respondents by the withdrawal of Jeffrey's motion for leave to withdraw as counsel for respondents, without prejudice and with leave to renew, should Jeffrey and Hitrinov be unable to resolve the legal equivalent of a 'marital squabble'.

In closing, and lest Jeffrey continue to violate the RPP with impunity by wrongfully attempting to interpose a reply to complainants' instant response it is respectfully submitted that as a non-dispositive motion that neither Jeffrey nor his client, Hitrinov may interpose a reply absent leave of the Presiding Officer to do so.

Based upon the foregoing, together with the arguments set forth above, it is respectfully submitted that the Presiding Officer should (1) deny the "joint" request of Jeffery and Hitrinov for a sixty (60) day adjournment of Jeffery's pending motion; (2) deem the right of respondent, Hitrinov (or his estranged attorney Jeffrey on Hitrinov's behalf) to ask for an extension of time to respond to Jeffery's Motion to Withdraw as having been *waived*; (3) render a decision on Jeffery's Motion to Withdraw based upon the submissions filed with the Presiding Officer to date; and (4) grant complainants such other and further relief as the Presiding Officer may deem just and proper under the circumstance.

Dated: November 23, 2016
Brooklyn, New York

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Marcus A. Nussbaum', written over a horizontal line.

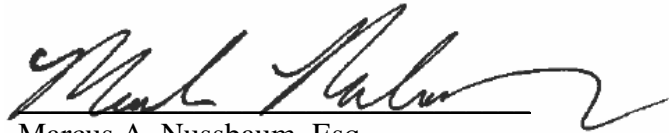
Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
Attorney for Complainants
marcus.nussbaum@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **COMPLAINANTS' RESPONSE TO RESPONDENTS' JOINT MOTION FOR AN EXTENSION OF TIME and APPENDIX** upon Respondents' Counsel at the following address:

Nixon Peabody LLP
Attn: Eric C. Jeffrey, Esq.
799 9th Street NW, Suite 500
Washington, DC 20001-4501

by first class mail, postage prepaid, and by email (ejeffrey@nixonpeabody.com).

A handwritten signature in black ink, appearing to read 'Marcus A. Nussbaum', is written over a horizontal line.

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
Attorney for Complainants
marcus.nussbaum@gmail.com

Dated: November 23, 2016 in Brooklyn, New York.